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CHARTER EQUALITY RIGHTS: INTERPRETATION OF SECTION 15 IN SUPREME COURT OF CANADA DECISIONS

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**CHARTER EQUALITY RIGHTS: INTERPRETATION OF
SECTION 15 IN SUPREME COURT OF CANADA DECISIONS**

This paper contains a summary review of a number of principles relevant to section 15 and section 1 analysis, as determined by the Supreme Court of Canada, followed by a chart setting out basic elements of Supreme Court of Canada decisions in which the equality rights provision has been raised.

SUBSECTION 15(1)

Section 15 of the *Canadian Charter of Rights and Freedoms*, in effect since April 1985, provides that:

- (1) Every individual is equal before and under the law and has the right to the equal protection of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.
- (2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

The Supreme Court of Canada issued its first section 15 ruling in 1989. *Andrews v. Law Society of British Columbia*⁽¹⁾ articulated an interpretive framework for the application of subsection 15(1) in future equality rights cases. Accordingly, subsequent determinations as to whether legislative distinctions or other government action violate section 15 of the Charter required lower courts to apply the *Andrews* framework.

Andrews involved a successful challenge to the statutory citizenship requirement for entry into the legal profession in British Columbia. The British Columbia Court of Appeal had

(1) [1989] 1 S.C.R. 143

applied a formal equality test in its consideration of section 15, according to which persons similarly situated were entitled to similar treatment, and different treatment of persons differently situated was justified.⁽²⁾ Although confirming the appellate court's decision, the Supreme Court of Canada rejected its formal equality analysis in favour of a substantive equality approach.

Relevant principles set out in *Andrews* include the following:

- The section 15 equality guarantee is mainly concerned with the impact of the law on the individual or group concerned. It has a "large remedial component."
- Equality is a comparative concept, discernible through comparison with the condition of others within the relevant social or political context. Section 15 is not, however, a general guarantee of equality: differential treatment does not necessarily result in inequality, while identical treatment may frequently produce serious inequality. Subsection 15(2) recognizes this fact by providing that laws and programs having as their object the amelioration of conditions of disadvantaged groups are not precluded by subsection 15(1).⁽³⁾
- A law will thus not necessarily be "bad" because it makes distinctions. Legislative classifications are necessary for the governance of modern society. Section 15 was not intended to eliminate all distinctions in laws, but only those that are discriminatory.
- For section 15 purposes, discrimination is defined as a distinction, intentional or not, that is based on grounds relating to the personal characteristics of the individual or group concerned, and that has the effect of imposing disadvantages or burdens not imposed on others, or of withholding access to advantages or benefits available to others. This definition emphasizes the importance of the impact of the impugned distinction.
- The personal characteristics that will or may ground a section 15 claim are those enumerated within the section itself, as well as certain non-enumerated characteristics such as, for example, citizenship in the circumstances of the *Andrews* case. The enumerated grounds "reflect the most common and probably the most socially destructive and historically practised bases of discrimination and must ... receive particular attention."

(2) Most of the appellate and other lower courts across the country had used this test since the coming into effect of the provision in April 1985.

(3) Subsection 15(2) has not yet been fully considered by the Supreme Court of Canada and is not discussed further.

- The determination of whether a non-enumerated ground falls within the scope of section 15 requires assessment as to whether it is "analogous" to the enumerated grounds.⁽⁴⁾ The enumerated and analogous grounds approach concentrates on the personal characteristics of those claiming to have been treated unequally, and asks whether those in that group have been subjected to historical disadvantage, stereotyping and prejudice.
- It is not, however, sufficient to focus on whether the claim is based on an enumerated or a non-enumerated, analogous ground. The effect of the challenged distinction must also be weighed. A complainant must establish "not only that he or she is not receiving equal treatment before and under the law or that the law has a differential impact on him or her in the protection or benefit accorded by law but, in addition, must show that the legislative impact of the law is discriminatory."

Andrews thus determined that a finding of section 15 infringement requires:

- inequality, or a distinction based on personal characteristics with respect to treatment and/or impact in the formulation or application of the law
- and
- discrimination, evidenced by an effect of prejudice to a disadvantaged individual or group, as determined by the enumerated grounds and/or those non-enumerated grounds analogous to them.

Subsequent Supreme Court of Canada decisions expanded upon the basic *Andrews* framework. Certain concepts have retained particular significance. In *R. v. Turpin*,⁽⁵⁾ in particular, the Court reinforced the *Andrews* criterion of disadvantage for purposes of establishing a section 15 violation based on analogous grounds:

(4) The "enumerated or analogous grounds" approach endorsed by the Supreme Court of Canada in *Andrews* was taken by the Federal Court of Appeal in *Smith, Kline & French Laboratories v. Canada (Attorney General)*, [1987] 2 F.C. 359

(5) [1989] 1 S.C.R. 1296

- The Court reiterated the importance of looking "not only at the impugned legislation which has created a distinction that violates the right to equality but also to the larger social, political and legal context." In this light, a finding of discrimination under section 15 of the Charter will, in most cases, entail a search for "disadvantage that exists apart from and independent of the particular legal distinction being challenged." The criterion of general disadvantage in addition to the particular prejudicial distinction under challenge has not gone uncriticized, but has remained a key consideration for section 15 claims.
- The Court also confirmed that deciding whether a group is "analogous" and therefore one that should benefit from section 15 protection requires an examination of the group's place in society. One analytical tool identified for this purpose has involved an evaluation of whether the group constitutes a "discrete and insular minority."⁽⁶⁾
- In the same vein, *Turpin* defined the overall purpose of section 15 as being the remedying or preventing of discrimination against groups suffering social, political and legal disadvantage in Canadian society. Thus, deciding whether a group is protected by section 15 involves "a search for indicia of discrimination such as stereotyping, historical disadvantage or vulnerability to political or social prejudice." This definition has been stated and applied in many subsequent Supreme Court of Canada and lower court cases.

Additional guiding principles worth retaining include the Court's finding, in *R. v. Nguyen*; *R. v. Hess*,⁽⁷⁾ that a legislative provision addressing a group by reference to an enumerated characteristic does not necessarily result in an automatic section 15 violation, absent a discriminatory result as defined in *Andrews*.⁽⁸⁾ In *McKinney v. University of Guelph*,⁽⁹⁾ the Court

(6) This criterion has also been the subject of criticism but it, too, has remained an important factor routinely referred to in subsequent lower court cases. Some have favoured a de-emphasis of notions of discreteness and insularity, which, if considered determinative, might unduly restrict the scope of section 15.

(7) [1990] 2 S.C.R. 906

(8) In subsequent cases in which the enumerated ground was age, however, the Court found section 15 infringements on the basis of very little analysis: see *McKinney v. University of Guelph, Tétreault-Gadoury v. Canada (Canada Employment and Immigration Commission)*, [1991] 2 S.C.R. 22

(9) [1990] 3 S.C.R. 229

held that the term "law" in section 15 is not confined to statutory instruments such as laws and regulations, but may also extend to government policies or contracts. *McKinney* also affirmed that section 15 protects against both direct discrimination and adverse effect discrimination.⁽¹⁰⁾ *R. v. Swain*⁽¹¹⁾ confirmed that section 15 protection is also available in respect of common law rules that form the basis for governmental action. *Symes v. Canada*⁽¹²⁾ confirmed that a finding of discrimination does not require that all members of a group be negatively affected by a legislative distinction. *Adler v. Ontario*⁽¹³⁾ confirmed that Charter guarantees, including section 15 equality rights, cannot be invoked either to enlarge or to invalidate other provisions of the Constitution. In *Benner v. Canada (Secretary of State)*,⁽¹⁴⁾ the Court affirmed that although section 15 does not apply retroactively, determinations of retroactivity depend on characterization of circumstances of individual cases, including whether their most relevant feature is a past event or a current condition resulting from it.

Swain contains a useful review of the approach developed in *Andrews-Turpin*:

[These] cases convey a basic framework within which particular s. 15(1) claims can be analyzed. The court must first determine whether the claimant has shown that one of the four basic equality rights has been denied ... This inquiry will focus largely on whether the law has drawn a distinction (intentionally or otherwise) between the claimant and others, based on personal characteristics. Next, the court must determine whether the denial can be said to result in "discrimination." This second inquiry will focus largely on whether the differential treatment has the effect of imposing a burden, obligation or disadvantage not imposed upon others or of withholding or limiting access to opportunities, benefits and advantages available to others. Furthermore, in determining whether the claimant's s. 15(1) rights have been infringed, the Court must consider whether the personal characteristic in question falls within the grounds enumerated in the section or within an analogous ground, so as to ensure the claim fits

(10) Direct discrimination may arise when the challenged law or other government activity contains an explicit distinction based on an enumerated or analogous ground. Adverse effect discrimination may occur when an apparently neutral rule nevertheless has a prejudicial impact on a group entitled to the benefit of section 15 protection.

(11) [1991] 1 S.C.R. 933

(12) [1993] 4 S.C.R. 695.

(13) (1996), 140 D.L.R. (4th) 385. See also *Reference re Bill 30, An Act to amend the Education Act*, [1987] 1 S.C.R. 1148.

(14) 27 February 1997, File No. 23811.

within the overall purpose of s. 15; namely, to remedy or prevent discrimination against groups subject to stereotyping, historical disadvantage and political and social prejudice in Canadian society.

This analytical scheme has been applied, essentially unchanged, in later Supreme Court of Canada rulings.⁽¹⁵⁾

However, three decisions issued in May 1995 revealed a marked three-way division among members of the Court as to the appropriate approach to section 15 interpretation.⁽¹⁶⁾ These rulings indicated that:

- a minority of four justices continues to subscribe largely to the *Andrews* framework, as outlined above;⁽¹⁷⁾
- an equivalent number of justices favour an approach whereby the relevance of the legislative distinction under challenge to the fundamental values of the statute is a determining factor for purposes of finding whether or not there has been a section 15 violation;⁽¹⁸⁾
- one Court member proposes concentration on the notion of discrimination *per se*, and de-emphasis of the question of whether the "ground" of discrimination is enumerated or

(15) See for example, *Symes*; note 12, at 753-58.

(16) *Thibaudeau v. Canada*, [1995] 2 S.C.R. 627; *Egan v. Canada*, [1995] 2 S.C.R. 513; *Miron c. Trudel*, [1995] 2 S.C.R. 418.

(17) Some variation is, however, worth noting. In *Miron*, for example, at par. 149, McLachlin J. commented that analogous ground "criteria" invoked in *Turpin*, note 5, while valid indicators, need not necessarily be present to make an analogous ground finding. In her view, such grounds "cannot be confined to historically disadvantaged groups" if the Charter is to retain future relevance, nor is it essential that a discrete and insular minority be targeted, as demonstrated by the inclusion of sex among the enumerated grounds. She also restated the "overarching" purpose of section 15 as being "to prevent the violation of human dignity and freedom by imposing limitations, disadvantages or burdens through the stereotypical application of presumed group characteristics rather than on the basis of individual merit, capacity, or circumstance". This statement was taken up by Iacobucci J. for a unanimous Court in its subsequent ruling in *Benner*, note 14.

(18) This approach was subjected to explicit criticism by other members of the Court, among other reasons because, in their view, it confuses section 15 analysis with section 1 justification; under the *Andrews* framework and general principles of Charter interpretation, these steps ought to be kept analytically distinct.

analogous, primarily through consideration of the nature of the group and the nature of the interest adversely affected by the legislative distinction.

It is difficult to predict the nature and extent of repercussions of this split for the future evolution of section 15 interpretation, among other reasons because the *Andrews* framework has, until now, served as the authoritative guide in this area. The matter remains unresolved in the Court's post-trilogy rulings to date in which section 15 issues have been addressed.⁽¹⁹⁾

SECTION 1

Section 1 reads:

The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits as can be demonstrably justified in a free and democratic society.

As the terms of the section make clear, no Charter protection is absolute. In the presence of a section 15 violation, the courts therefore undertake a separate section 1 evaluation to determine whether the infringement nevertheless constitutes a reasonable limit to the equality rights guarantee.

The government bears the burden of establishing that any Charter breach is justified. The governing approach to section 1 analysis detailed by the Supreme Court of Canada in *R. v. Oakes*⁽²⁰⁾ involves a two-step process. First, the objective of the legislation or government action must be shown to be sufficiently important to warrant overriding a Charter right. Second, the means adopted to attain that objective must be reasonable and demonstrably justified. This step

(19) In *Adler v. Ontario*, note 13, only two members of the Court, in dissent, and representing two of the three analyses outlined in the "trilogy," undertook a full section 15 analysis. In the Court's unanimous decision in *Eaton v. Brant Co. Bd. of Education*, 6 February 1997, File No. 24668, at par. 62, Sopinka J. acknowledged that "there has not been unanimity" with respect to section 15 principles, but found the disability issue before the Court could be resolved "on the basis of principles in respect of which there is no disagreement." Similarly, Iacobucci J. in *Benner v. Canada*, note 14, having noted the three trilogy approaches to section 15, applied a largely traditional approach to the circumstances of the case for a unanimous Court, adding at par. 67, that "the result in this appeal is in my opinion the same no matter which [of the three tests] is applied."

(20) [1986] 1 S.C.R. 103

the means adopted to attain that objective must be reasonable and demonstrably justified. This step entails a proportionality test in which the courts are required "to balance the interests of society with those of individuals or groups." Three elements must be satisfied:

- the measures adopted must be rationally connected to the objective,
- the measures adopted should cause minimal impairment to the right or freedom in question and
- there must be a proportionality between the effects of the measures limiting the right or freedom and the objective identified as being sufficiently important.⁽²¹⁾

In the years since *Oakes*, the application of its "strict" section 1 test has undergone adjustments. In particular, the Supreme Court of Canada has developed a flexible approach to the *Oakes* test's "minimal impairment" requirement which has resulted in a less stringent section 1 analysis in certain cases. The approach evolved to a significant extent, and has frequently been applied, in cases in which the interests of vulnerable groups have been central to the Court's section 1 analysis. For example, in a number of major cases involving the Charter's subsection 2(b) freedom of expression provision, legislation violating that guarantee has nevertheless been upheld on the basis that it offered vulnerable groups needed protection from harm of one form or another.⁽²²⁾

The flexible approach to section 1 analysis also allows for greater judicial deference to legislative choice in "socio-economic" cases involving circumstances that require the government to strike a balance between the legitimate claims of competing groups for limited resources. The reasoning has been that, since neither the government nor the courts can be absolutely certain as to

(21) In 1994 the Court ruled that in some cases, this element of the proportionality test also required proportionality between the deleterious and salutary effects of the measures at issue: *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835

(22) See *Irwin Toy Ltd. v. Québec (A.G.)*, [1989] 1 S.C.R. 927 (provincial regulation limiting advertising directed to children); *Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038 (adjudicator's order requiring employer to provide positive letter of reference to wrongfully-dismissed employee); *R. v. Keegstra*, [1990] 3 S.C.R. 697 (*Criminal Code* provision prohibiting the dissemination of hate propaganda); *R. v. Butler*, [1992] 1 S.C.R. 452 (*Criminal Code* provision prohibiting the dissemination of obscenity). For other contexts in which a similar reasoning has been applied, see *R. v. Edwards Books and Art Ltd.*, [1986] 2 S.C.R. 713 (freedom of religion: retail employees); *Public Service Alliance of Canada et al. v. The Queen in right of Canada et al.*, [1987] 1 S.C.R. 424 (freedom of association: workers not party to a P.S.A.C. challenge); *Rodriguez v. British Columbia (Attorney General)*, [1993] 3 S.C.R. 519 (security of the person: disabled persons)

the "best" balance in such cases, the appropriate question is not whether the right in question has been minimally impaired, but rather whether the government had a reasonable basis for so concluding. Where, on the other hand, the government acts as the claimant's "singular antagonist," for example in cases involving legal rights, the courts are in a better position to assess with greater certainty whether the least drastic means have been employed.⁽²³⁾

The flexible approach to the minimal impairment branch of the *Oakes* test, which allows courts greater leeway to defer to legislative choice, has not necessarily been limited to cases in which complex socio-economic policies or the protection of vulnerable groups have been at issue. Nor has the distinction between "competing groups" cases and "singular antagonist" cases necessarily been determinative for purposes of deciding when to apply the flexible approach. The question as to when and how the less stringent *Oakes* test may appropriately be invoked has been a source of disagreement in many Supreme Court of Canada decisions⁽²⁴⁾ and appears to remain somewhat unsettled.

(23) The "competing groups" - "singular antagonist" distinction is set out in *Irwin Toy* and has been relevant to the section 1 findings in a number of subsequent cases, including section 15 decisions such as *McKinney*. In the *Egan* decision, for example, Sopinka J., in his section 1 analysis, commented that the *Old Age Security Act* issue in that case "represents the kind of socio-economic question in respect of which the government is required to mediate between competing groups rather than being the protagonist of an individual. In these circumstances, the Court will be more reluctant to second-guess the choice which Parliament has made."

(24) See, for example, *McKinney*, note 9, *Egan*, note 15, *Rodriguez*, note 20.

SECTION 15 OF THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS
SUPREME COURT OF CANADA DECISIONS

Style of Cause	Nature of Challenge	Ground(s) of Discrimination	Result
<i>Andrews v. Law Society of British Columbia</i> [1989] 1 S.C.R. 143 (unanimous <i>re</i> section 15 violation; 4-2 majority finding violation not justified under section 1)	<i>Barristers and Solicitors Act</i> of B.C.: eligibility to practise law restricted on basis of citizenship requirement	Citizenship (non-enumerated)	Citizenship recognized as analogous ground, section 15 violation not justified under section 1
<i>Reference Re Workers' Compensation Act, 1983 (Nfld.)</i> [1989] 1 S.C.R. 922 (unanimous)	<i>Workers' Compensation Act, 1983</i> of Newfoundland: restriction of right to seek compensation other than under Act	employment status (non-enumerated)	Situation of workers and dependants not analogous to that of enumerated groups, no section 15 violation
<i>R. v. Turpin</i> [1989] 1 S.C.R. 1296 (unanimous)	<i>Criminal Code</i> : restricted eligibility to choose method of trial for certain offences, based on province of prosecution/residence	province of prosecution/ residence - place/mode of trial (non-enumerated) (infringement of subsection 11(f) right to waive jury trial also claimed unsuccessfully)	Despite acknowledged inequality of treatment, accused in all provinces but Alberta not disadvantaged group, no section 15 violation
<i>Rudolph Wolff & Co. v. Canada</i> [1990] 1 S.C.R. 695 (unanimous)	<i>Federal Court Act, Crown Liability Act</i> : suits of individuals against Crown restricted to Federal Court jurisdiction	litigants against Crown (non-enumerated)	Crown not an individual for purposes of comparison under section 15, no distinction based on analogous ground, no section 15 violation

Style of Cause	Nature of Challenge	Ground(s) of Discrimination	Result
<i>R. v. S. (S.)</i> [1990] 2 S.C.R. 254 (unanimous)	<i>Young Offenders Act</i> : alternative measures program unavailable in Ontario on basis of discretionary government decision	Province of residence (non-enumerated)	Discretionary decision not "the law" for section 15 purposes; if law conferring discretion were challenged, province of residence distinction not based on "personal characteristic", no section 15 violation
<i>R. v. Nguyen; R. v. Hess</i> [1990] 2 S.C.R. 906 (4-3 on section 15 issue)	<i>Criminal Code</i> : definition of offence of having intercourse with person under 14 years of age restricted to male offenders and female victims	sex (enumerated) (infringement of section 7 right not to be deprived of liberty except in accordance with fundamental justice also claimed successfully (5-2))	Distinction based on enumerated ground not automatic section 15 violation, section 15 not precluding offence capable of commission by one sex as matter of biological fact, no section 15 violation
<i>McKinney v. University of Guelph</i> [1990] 3 S.C.R. 229 (unanimous re section 15 violation among judges considering issue; 5-2 as to result)	(1) University policies: mandatory retirement; (2) Ontario <i>Human Rights Code</i> : restriction of prohibition against age discrimination to persons under 65	age (enumerated) (Note: Majority reasons noting case one of adverse effect discrimination)	(1) Charter not applicable to universities: assuming it were, mandatory retirement policies violating section 15 but justified under less stringent section 1 test; (2) Code provision also in violation of section 15 but entitled to deference under section 1
<i>Stoffman v. Vancouver General Hospital</i> [1990] 3 S.C.R. 483	Medical Staff regulation: mandatory retirement	age (enumerated)	Charter not applicable to hospitals: assuming it were, regulation violating section 15

Style of Cause	Nature of Challenge	Ground(s) of Discrimination	Result
(unanimous <i>re</i> section 15 violation among judges considering issue; 4-3 as to result)			justified under less stringent section 1 analysis
<i>Connell v. University of British Columbia</i> [1990] 3 S.C.R. 451 (unanimous <i>re</i> section 15 violation among judges considering issue; 6-1 and 5-2 as to result)	(1) University policies: mandatory retirement; (2) <i>Human Rights Act</i> of B.C.: prohibition against discrimination in employment restricted to persons under 65	age (enumerated)	(1) Charter not applicable to university policies; assuming it were, policies in violation of section 15 violation justified under section 1; (2) Act also violating section 15 but meeting section 1 test
<i>Douglas/Kwantlen Faculty Assn. v. Douglas College</i> [1990] 3 S.C.R. 570 (unanimous as to result)	Collective agreement: mandatory retirement provision	age (enumerated)	Charter applicable to college, collective agreement constituting "law" for section 15 purposes, arbitrator having jurisdiction to consider whether provision in collective agreement in compliance with section 15: N.B. no decision on merits of section 15 case
<i>R. v. Swain</i> [1991] 1 S.C.R. 933 (6-1 as to result)	(1) <i>Criminal Code</i> : provision for automatic detention of person found not guilty by reason of insanity; (2) Common law criterion enabling Crown to	disability (enumerated) ((1) and (2) infringement of section 7 right not to be deprived of liberty except in accordance with fundamental	Owing to section 7 finding with respect to (2), no section 15 discussion or conclusion: section 15 discussion limited to determination that new common

Style of Cause	Nature of Challenge	Ground(s) of Discrimination	Result
	adduce evidence of an accused's insanity against the accused's wishes	justice also claimed successfully; (2) infringement of section 9 right not to be arbitrarily detained also claimed successfully)	law rule formulated by Court not in violation of that section
<i>Tétreault-Gadoury v. Canada</i> (<i>Canada Employment and Immigration Commission</i>) [1991] 2 S.C.R. 22 (unanimous)	<i>Unemployment Insurance Act</i> : disentitlement of persons aged 65 to regular unemployment insurance benefits	age (enumerated) (Note: Court noting case one of adverse effect discrimination)	Board of referees without jurisdiction to consider Charter issue, provision in violation of section 15 and not justified under section 1
<i>R. v. G��n��reux</i> [1992] 1 S.C.R. 259 (unanimous on section 15 issue)	General Court Martial proceedings	membership in military (non-enumerated) (infringement of subsection 11(d) right to hearing before independent and impartial tribunal also claimed successfully (8-1))	Military personnel not falling within analogous ground, no section 15 violation
<i>Canada (Minister of Employment and Immigration) v. Chiarelli</i> [1992] 1 S.C.R. 711 (unanimous)	<i>Immigration Act</i> : provisions requiring deportation of permanent residents convicted of offences subject to certain sentences	permanent residents convicted of relevant offences (non-enumerated) (infringement of section 7 right not to be deprived of fundamental justice and of section 12 right not to be subjected to cruel and unusual	Charter section 6 providing for differential treatment of permanent residents and citizens, permanent residents convicted of serious offences not falling within analogous ground, deportation scheme not violating section 15

Style of Cause	Nature of Challenge	Ground(s) of Discrimination	Result
<i>Weatherall v. Canada (Attorney General)</i> [1993] 2 S.C.R. 872 (unanimous)	Frisk searches and cell patrols by female guards in male prisons	treatment or punishment also claimed unsuccessfully) sex (enumerated) (infringement of section 7 right not to be deprived of liberty except in accordance with fundamental justice and of section 8 right to be secure against unreasonable search and seizure also claimed unsuccessfully)	Doubtful that differential treatment in question in violation of section 15: even if section 15 infringed, such infringement justified under section 1
<i>Haig v. Canada; Haig v. Canada (Chief Electoral Officer)</i> [1993] 2 S.C.R. 995 (unanimous on section 15 issue)	<i>Referendum Act, Canada</i> <i>Elections Act</i> : failure to make provision for enumeration of all citizens in "national" referendum	new residents of province (non-enumerated) (infringement of subsection 2(b) freedom of expression guarantee and of section 3 right to vote also claimed unsuccessfully)	Persons moving to Quebec less than six months prior to referendum not falling within analogous ground, no section 15 violation
<i>Rodriguez v. British Columbia (Attorney General)</i> [1993] 3 S.C.R. 519 (7-2 on section 15 issue, 5-4 as to result)	<i>Criminal Code</i> : prohibition against assisting suicide	disability/disabled persons unable to commit suicide without assistance (enumerated) (infringement of section 7 right not to be deprived of security/liberty except in accordance with fundamental justice and of section 12 right not to be subjected to cruel and	Majority concluding that since any section 15 violation justified under section 1, preferable to make no section 15 findings: essentially a section 7 case

Style of Cause	Nature of Challenge	Ground(s) of Discrimination	Result
<i>Young v. Young</i> [1993] 4 S.C.R. 3 (unanimous as to result on constitutional issues)	<i>Divorce Act</i> : Court orders for custody and access based on best interests of child	unusual treatment or punishment also claimed unsuccessfully) unspecified, presumably religion (enumerated) (infringement of subsections 2(a) freedom of religion, 2(b) freedom of expression and 2(d) freedom of association guarantees also claimed unsuccessfully)	Assuming Charter applicable to access action under <i>Divorce Act</i> , section 15 guarantee, if applicable, tangential to case based principally on subsections 2(a) and 2(b), no section 15 discussion, no section 15 violation
<i>Symes v. Canada</i> [1993] 4 S.C.R. 695 (7-2 on section 15 issue)	<i>Income Tax Act</i> : provision limiting child care expense deduction	sex (enumerated)	Evidence not establishing adverse effect discrimination, no section 15 violation
<i>R. v. Finta</i> [1994] 1 S.C.R. 701 (unanimous as to Charter issues raised on cross-appeal among judges considering them)	<i>Criminal Code</i> : provisions allowing conviction for crimes against humanity or war crimes committed outside Canada	persons committing relevant crimes outside Canada (non-enumerated) (infringement of section 7 right not to be deprived of liberty/security except in accordance with fundamental justice, and of subsections 11(a) right to be informed of offence charged without unreasonable delay, 11(b) right to be tried within reasonable time, 11(d) right to be presumed innocent,	Difference in treatment based on location of crime, not personal characteristic, group of persons committing war crime or crime against humanity outside Canada not falling within analogous ground, no section 15 violation

Style of Cause	Nature of Challenge	Ground(s) of Discrimination	Result
		11(g) right not to be found guilty of any act not an offence at the time of its commission also claimed unsuccessfully)	
<i>Native Women's Assn. of Canada v. Canada</i> [1994] 3 S.C.R. 627 (unanimous as to result)	Exclusion of N.W.A.C. from direct funding and participation in relation to constitutional discussions	sex (enumerated) (infringement of subsection 2(b) freedom of expression guarantee, in collaboration with section 28 guarantee of equality between sexes, also claimed unsuccessfully)	Based on facts of case, government under no constitutional obligation to provide funding, all members of Court considering Charter issue finding lack of evidentiary basis to support Charter infringement under either subsection 2(b) in combination with section 28, or section 15, no section 15 violation: essentially argued as a subsection 2(b) and section 28 case
<i>Thibault v. Canada</i> [1995] 2 S.C.R. 627 (5-2 on section 15 issue)	<i>Income Tax Act</i> : provision requiring custodial parent to include child support payments in income	sex (enumerated), family status - separated custodial parents (non-enumerated)	Inclusion/deduction scheme not creating a "burden" for custodial parents for section 15 purposes, no section 15 violation
<i>Egan v. Canada</i> [1995] 2 S.C.R. 513 (5-4 on section 15 issue; 5-4 as to result)	<i>Old Age Security Act</i> : denial of spousal allowance based on opposite sex definition of "spouse"	sexual orientation (non-enumerated)	Sexual orientation recognized as analogous ground for section 15 purposes, section 15 violation justified under section 1

Style of Cause	Nature of Challenge	Ground(s) of Discrimination	Result
<i>Miron v. Trudel</i> [1995] 2 S.C.R. 418 (5-4 on section 15 issue)	Denial of accident benefits to common law spouses under provincial legislation-based automobile insurance policy	marital status (non-enumerated)	Marital status recognized as analogous ground for section 15 purposes, section 15 violation not justified under section 1
<i>Adler v. Ontario</i> (1996), 140 D.L.R. (4th) 385 ((1) 7-2 on section 15 issue, 8-1 as to result; (2) 7-2 on section 15 issue)	<i>Education Act</i> of Ontario: (1) absence of funding to minority religion-based independent schools; (2) absence of school health support services to children with disabilities attending such schools	religion (enumerated) (infringement of subsection 2(a) freedom of religion guarantee also claimed unsuccessfully)	Among justices concurring on section 15 issue for different reasons, five concluding effect of section 93 of <i>Constitution Act, 1867</i> to insulate both claims from Charter scrutiny, two finding against section 93-based immunity but concluding distinctions alleged not arising under legislation: no section 15 violation
<i>Cooper v. Canada (Human Rights Commission) Bell v. Canada (Human Rights Commission)</i> (1996), 140 D.L.R. (4th) 193. (5-2 as to result)	<i>Canadian Human Rights Act</i> : provision under which termination of employment at normal age of retirement for industry not a discriminatory practice	age (enumerated)	Neither Canadian Human Rights Commission nor tribunal appointed by it mandated to consider questions of law; both therefore without jurisdiction to subject limiting provisions of CHRA to constitutional scrutiny or to determine their constitutional validity: N.B. no discussion or decision on merits of section 15 case

Style of Cause	Nature of Challenge	Ground(s) of Discrimination	Result
<i>Eaton v. Brant Co. Bd. of Education</i> 6 February 1997 File No. 24668 (unanimous)	Decision of the Ontario Special Education Tribunal confirming a special education placement of a disabled child, contrary to parents' wishes.	disability (enumerated)	Disability unlike enumerated grounds not characterized by individual differences, purpose of section 15 involving recognition and accommodation of <u>actual</u> characteristics of disabled: here placement consistent with child's educational interests and needs, not imposing burden or withholding benefit, no section 15 violation
<i>Benner v. Canada (Secretary of State)</i> 27 February 1997 File No. 23811 (unanimous)	<i>Citizenship Act</i> : provisions distinguishing between access to Canadian citizenship for children born abroad of Canadian mothers and those born of Canadian fathers prior to February 1977, with former subjected to more onerous process and requirements	sex (enumerated)	Ongoing status created by 1977 legislation subject to Charter scrutiny, provisions maintaining stereotype favouring paternal over maternal lineage in violation of section 15 and not justified under section 1

